



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200623076

MAR 17 2006

SE:T:EP:RA:T1

Uniform Issue List: 408.03-00

Legend:

Taxpayer A =

IRA B =

Financial Institution C =

Broker D =

Company E =

Company F =

Amount 1 =

Amount 2 =

Amount 3 =

Dear :

This letter is in response to a request for a letter ruling dated May 4, 2005, as supplemented by additional correspondence dated October 15, 2005 and December 7, 2005, from your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age 53, represents that he received a distribution from IRA B totaling Amount 1. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to the misappropriation of funds by Company E.

Taxpayer A maintained IRA B with Financial Institution C. Broker D was Taxpayer A's investment advisor with Company E. Broker D was the owner of Company E which was advertised as a "Registered Investment Advisors" firm. Company E's letterhead indicated it was a member of the National Association of Securities Dealers, Inc ("NASD"), Security Investor Protection Corporation ("SIPC") and Municipal Securities Rulemaking Board ("MSRB"). Taxpayer A represents that he had received stock buy and sell recommendations from Broker D for approximately three years. Taxpayer A represents that Broker D contacted him in early [redacted] about making an investment of Amount 2 in a private placement offering of Company F. Taxpayer A was advised to withdraw Amount 1 from IRA B and Amount 3 from a non-IRA account held with his spouse. Broker D advised Taxpayer A that Amount 1 would be treated as an IRA rollover. The stock order form signed by Taxpayer A and his spouse indicated that Amount 1 would be held in an IRA.

Acting on this advice, Taxpayer A withdrew Amount 1 from IRA B on April 22, [redacted]. On May 15, [redacted], Taxpayer A's spouse wired Amount 2 to Broker D at Company E. Taxpayer A represents that he made many inquiries to Broker D requesting paperwork substantiating the transaction. Broker D consistently told Taxpayer A that the paperwork would be forwarded to him. Taxpayer A never received the paperwork promised by Broker D. After several additional attempts to contact Broker D, believing that Amount 2 had been misappropriated by Broker D, Taxpayer A filed a complaint with the NASD against Broker D, in an effort to recover his investment. To date the investigation is continuing.

Based on the above facts and representations, Taxpayer A requests that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement with respect to the distribution of Amount 1 contained in section 408(d)(3) of the Code.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was due to the misappropriation of Amount 1 by Company E during the 60-day rollover period.

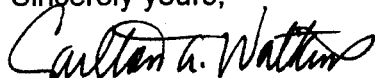
Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA B. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 into a Rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount 1 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact _____ at _____. Please address all correspondence to _____.

Sincerely yours,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose, Notice 437

cc: